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08/537,843 10/19/95 BAUMANN

E 0050/43997

EXAMINER

CLARDY, S

ART UNIT

PAPER NUMBER

#5

12M2/0925

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1209

DATE MAILED:

09/25/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined ☒ Responsive to communication filed on 10/19/95 ☐ This action is made final.
- A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 1-14 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
- ☐ Claims \_\_\_\_\_ have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☒ Claims 1-14 are rejected.
- ☐ Claims \_\_\_\_\_ are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
- ☒ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☒ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

-EXAMINER'S ACTION-

Art Unit:

Claims 1-14 are pending in this application.

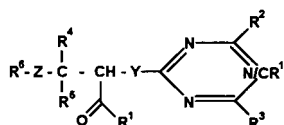
Applicants' claims 1-10 are drawn to herbicidal compounds, compositions, and methods comprising substituted pyrimidinyl or triazinyl carboxylic acid derivatives of formula I below wherein:

Z = O or S

Y = O, S, or single bond

R<sup>4</sup> = phenyl, naphthyl, or hetero

R<sup>14</sup> = H, or forms a ring with R<sup>3</sup>



I

and other R groups are as defined in claim 1. Claims 13 and 14 are drawn to methods of making the compounds. Claims 11-12 are drawn to methods of making compounds of formula VI:



VI

Claims 13 and following are unclear because of the amended sheet and page number changes:

	Page	Claim(s)
A	41	2 (last 4 lines) - 9
B	<del>41</del> 42	10 - 11 (line 1)
C	<del>42</del> 43	11 (remainder) - 12
D	42	11 (another remainder) - 13 (through structure VI)
E	<del>43</del> 44	13 (remainder) - 14.

It appears that page "D", above should be page 44, and that lines 1-36 thereon should be canceled, down to the first line of claim 13, which continues on page "E" (which should be page 45). The abstract will then be on page 46. It may be easiest to submit renumbered replacement pages.

Art Unit:

Claim 9 is rejected as being duplicate of claim 7. These are composition claims comprising a herbicide (claim 7) or an agent for influencing plant growth (claim 9), both containing a compound of formula 1 as claimed in claim 1, and conventional inert additives. The active compounds, as well as the inert additives in each claim are the same, thus the claims are duplicates.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 14, a group "R" is defined, but it does not occur elsewhere in the claim. From the  $-C(=O)R^1$  group in the structure above, it appears that "R" should be identified as "R<sup>1</sup>" (but see also claims 11-14, wherein R is used in compounds of formula VI).

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-14 are rejected under 35 U.S.C. § 103 as being unpatentable over the combined teachings of Harada et al (US 5,178,663), Harada et al (CA 119:139254e), and Kaku et al (EP 0 347 811).

Art Unit:

Harada et al (US and CA Abstract) and Kaku et al each teach herbicidal derivatives with applicants' core structure.

One of ordinary skill in the art would be motivated to combine these references because they disclose substituent variations on a common core structure which retain herbicidal activity.


Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have made applicants' herbicidal derivatives because various compounds with the claimed core structure were known to possess herbicidal activity, with significant substituent variation possible within this herbicidal set of compounds.

No comparisons with the closest prior art have been presented; no unobvious or unexpected results are noted.

No claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.

  
S. Mark Clardy  
Primary Examiner  
AU 1209

September 24, 1996